

Article Title: Debate on the Seminole War. Speech of Mr. Smith, Virginia. Long (three page) vindication of Jackson's military campaign in Florida and his handling of the trial of Arbuthnot and Ambrister, countering Mr. Cobb.

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DEBATE ON THE SEMINOLE WAR.

CONTINUED.

HOUSE OF REPRESENTATIVES.

JANUARY 21

MR. ALEXANDER SMITH, (of Virginia,) addressed the chair. I promised, said he, when the House received the report of the military committee, that I would, when the time for discussing it arrived, attempt to shew, that all the proceedings of General Jackson, in prosecuting the Seminole war, were justified by the law of nations. I will proceed to fulfil that promise.

In examining the proceedings of the armed force of the United States in Florida, I propose to make these enquiries: 1. Have the rights of the United States been transcended 2. Have the constitutional powers of the President been exceeded ? 3. Has General Jackson transcended his powers, or violated the laws of nations ?

I proceed with the first enquiry : Have the rights of the United States been transcended ?

The law of nations, like the common law of the land, is founded on reason and usage. To prove that it is reasonable that a nation should possess a certain right, is to prove that it does possess that right ; unless it is shewn that the custom and usage of nations is otherwise. We find those customs and usages in treatises compiled by writers on the law of nations

The right of security, or of self-preservation, is one of the most important, and most unquestionable rights of nations. A nation has a right not to suffer any other to obstruct its preservation. This is one of those rights called perfect rights. The definition of a perfect right is that it may be asserted by force. It is therefore the duty of the government to preserve the people. " The safety of the people is the first law." And we have a right to do whatever is necessary to the discharge of our duties.

We have a right, by the law of nations, to destroy hostile savages residing within the territorial limits of a neighbouring power, but not amenable to the civil laws. A neighbouring territory is not to become a safe asylum for banditti, who carry on against us predatory and murderous hostilities. You may not pursue a fugitive from justice, on the territory of a neighbouring nation : there is no necessity to authorise you to do so. But, if you cannot otherwise deliver yourself from an imminent danger, you may enter the territory of a neighbouring power.(a) ((a) Vattel, p. 167.) In short, the government, being bound to preserve the people, has a right to all the means necessary to preserve the people, whatever they may be. Nothing can dispense with the obligation, and nothing can destroy the right to the means.

The right of necessity, and the right of self-defence, are paramount to all other rights claimed under the law of nations. The inviolability of ambassadors, and even the inviolability of crowned heads, must yield to the security of nations.

Thus, a conspiracy having been formed in 1717, in England, contrived by the Swedish ambassador, to invade the country and dethrone the king, that ambassador was arrested and his papers seized; (b) ((b) Ward's Law of Nations, 2d vol. 380.) the other foreign ministers expressed their satisfaction, except the ambassador from Spain, who observed he was sorry no other way could be fallen on for preserving the peace of the kingdom. He then assigned a satisfactory reason for adopting the measure ; there was no other way of preserving the peace of the kingdom ; therefore, the measure was necessary for self-preservation, and consequently lawful.

The Speaker (Mr. Clay) has questioned the right of the United States to enter the country of the Seminoles in Florida, to suppress them, and put an end to their hostile incursions. It is a strange doctrine, that there is no way to put an end to the hostilities of a subject savage community, whose country lies within the territorial limits of a power with which we are at peace, but by declaring war against that power. The law of nations allows you to enter the territory of a neutral power in quest of an enemy. (c) ((c) Vattel, 318.) It is even still more reasonable that you should possess the right, when the territory claimed by the neutral power is, in fact, the country, the residence, of your savage enemy, where alone effectual hostilities can be carried on against him.

The right of a sovereign power to exclusive jurisdiction within a territory, is founded on the engagement to govern the inhabitants, and restrain them from injuring other nations. When the government is no longer able to restrain the inhabitants from injuring other nations, they have an undoubted right to attack such inhabitants, and suppress them, without going to war with that power which has become too feeble to restrain them. Should Buenos Ayres, or the Banda Oriental, having shaken off the authority of Spain, make war on the Brazilians, the latter would seem to have an undoubted right to invade them without going to war with Spain. Should Mexico set at naught the Spanish government, and make war against the United States, the latter would have a right to invade Mexico, without declaring war against Spain. So, in the case under consideration, Spain being unable to restrain the savages of Florida, has no right to complain that the United States have entered that country to restrain them.

The law of nations may be illustrated by cases in municipal law. I may pursue and destroy on your land a noxious animal which I have started on my own. If your house adjacent to mine is on fire, I may enter on your premises, and pull it down, for the preservation of mine. Where the reason is the same the law is the same.

Such being the right of the United States, by the law of nations, it is proper to enquire, what effect on those rights has been produced by the treaty between the United States and Spain. By that treaty, both powers bind themselves " expressly to restrain by force all hostilities on the part of the Indian nations within their boundary ; so that Spain will not suffer her Indians to attack the United States"(d) ((d) 2d vol. laws, 266) Spain, then, is bound to restrain her savage subjects, and is liable to pay all damages that may be sustained by her failure ; and should she fail, from inability to suppress them, she is still bound to use all the means in her power, and to furnish all the aid in her power, for that purpose. The engagements of a treaty impose a perfect obligation and give a perfect right ; a right when may if necessary be asserted by force.(e) ((e) Vattel, 182.) Spain then agrees and is bound that the Indians shall be suppressed, and the United States have a right that the Indians shall be suppressed. It is preposterous to contend that because Spain is unable to restrain the hostilities of her Indians, that therefore they are to remain unrestrained, when Spain has agreed that they shall be restrained. The consequence of the inability of Spain is, that the United States may use force in restraining the Indians of Spain ; and have a right to all the means of effecting that object that Spain can furnish. When the performance of the duties of Spain devolves on the United States, they have a right to the means of performing those duties. Therefore, if the possession of the forts in Florida is necessary to the suppression and restraint of those savages, the United States have a right to the possession of them.

The law of nations also recognizes the right, arising from necessity, of seizing a place of strength belonging to a neutral power, and putting a garrison into it, either for defending itself against the enemy, or for the purpose of preventing him in his designs of seizing this place, when the neutral government is not able to defend it.(f) (f) Vattel, 315) The treaty with Spain certainly neither diminishes or weakens the rights of the United States. It increases and strengthens them. The object of the article under consideration is the suppression of the hostile savages. This object is to be, and must be, effected. The two nations have agreed and bound themselves that it shall be effected ; and that agreement is as to them a written law of nations.

Our right being established, and the incapacity of Spain to fulfil her obligation notorious ; the law of nations allowed the United States, when they could not obtain due satisfaction by amicable means, or foresaw that it would be useless to try such means, to have recourse to forcible means in pursuit of

their rights.(g) ((g) Martens, 265, 268.) Indeed, the right claimed by the United States was of such a nature that a specific performance of the agreement to suppress the hostilities of the savages was indispensable. If that could not be performed by Spain, it must be performed by the United States, who would then be entitled to demand of Spain satisfaction for her failure to perform her engagements.

It therefore seems to me that there can be no doubt that the United States had a right to enter Florida in pursuit of the Seminole savages ; to possess the means necessary to restrain them; and to restrain them.

The enquiry that I propose to make is, Have the constitutional powers of the President been exceeded ?

An honorable gentleman from Georgia was of opinion that there should have been a declaration of war against the Seminoles. He says, " the war-declaring power has been snatched from Congress," Let me here remark, that I think this objection would have come better from any other quarter than from the state of Georgia, for the safety of whose people this war has been commenced and prosecuted. I would also, remark, that this objection would have come better from any other gentleman than him who made it ; yet no doubt he makes it in obedience to what he now deems his duty.

On examining the journals of the last session, I find, on the third of April, this entry : "On motion of Mr. Cobb, resolved, that the committee on military affairs be instructed to enquire into the expediency of increasing the pay of the militia now in service, or which may hereafter be called i to the service of the United States, in the war now prosecuting against the Seminole tribe of Indians." This was ten days after the President had informed the House that the army was authorised to enter Florida. An acknowledgment that war exists, is a declaration of war.(h) ((h) 4th vol. laws, 835.) It then appears, that at least the gentleman and this House have declared war. Another proof that the war was authorised by Congress, is found in the appropriation for the pay of militia employed therein. A third piece of evidence, which will prove satisfactory to the gentleman, is an act passed in pursuance of his resolution, which recognizes " the war against the Seminole tribe of Indians," and is a complete declaration of war by Congress.(i) ((i) Acts first session fifteenth Congress, p. 94.)

But all this was unnecessary to enable the President to make war against the Seminoles : for a defensive war need not be declared ; the state of war being sufficiently determined by the open hostilities of that enemy.(j) ((j) Vattel, 293.) Our war against the Indians is defensive, although carried on in their country, because we suffered the first act of violence.(k) ((k) Martens, 273.) Should Spain commence war against us after the rising of Congress, no doubt the Preident, with his fleets and armies, would be authorised to fight, before the meeting of Congress, and to continue fighting, whether the war was ever declared or not. And we have given to the President a continuing authority to repel invasions by the Indian tribes.(l) ((l) 2d vol. laws, 479.) The acts of Congress under which the President Washington ordered the Generals St. Clair and Wayne to invade the Indian country, merely authorised him to call out the militia to aid in protecting the frontiers from the hostile invasions of the Indians.(m) ((m) Same, 74, 102) The attack by the Indians of Florida being an invasion, the President was authorised to repel it, and in repelling to pursue and effectually to suppress the invaders.

It by no means follows, as some seem to suppose, that because the President cannot declare war, that he can do nothing for the protection of the nation, and the assertion of its rights. The power to declare war, is a power to announce regular war, or war in form, against another power. But it never was intended, by reserving this power to Congress, to take from the President the power to do any act necessary to preserve the nation's rights, and which does not put the nation into a state of war with another power. If Congress, in addition to the power of declaring war, assume to themselves the power of directing every movement of the public force that may touch a neutral ; or that may be made for preserving the national rights ; or executing the laws and treaties ; they will assume powers given to the President by the constitution. A declaration of war against savages is not only unnecessary, but would be highly impolitic. It would be an acknowledgment of their independence ; an acknowledgment that they may engage in war in form ; that the usages of such a war apply to hostilities with them ; and that they are entitled to the treatment of lawful enemies. I contend that

there can be no such thing as a war in form between this nation and a tribe of American savages. A war waged by Indians against the United States can have no lawful object. The only object of such a war must be plunder, massacre, destruction, and revenge. And incursions committed without lawful authority, or apparent cause, and only for havoc and pillage, can be productive of no lawful effect. A nation attacked by such enemies is under no obligation to treat them as lawful enemies. They may be hanged as robbers,(n) ((n) Vattel, 296, 297.) or banditti.

If the President has a right to repel an Indian invasion without a declaration of war, as I have contended, then he may lawfully enter even a neutral territory in pursuit of the enemy without making war against that neutral power ; and consequently without war having been declared against such power. If the United States have a right to enter the territory of Spain, there to suppress the Seminoles, as I have contended, then the President may assert that right: for the act being no act of war against Spain, a declaration of war is not necessary to precede or authorise its performance. The exercise of a right is neither war nor cause of war; nor does the violence which opposition may render necessary, make it war. We may enter a neutral territory to attack an enemy; we may seize a neutral place to anticipate an enemy ; we may pass by force, when necessary, through neutral territory ; yet the place or territory is still considered neutral ; and therefore the act is not war. This right of the nation is to be exercised by those entrusted with its protection. The President is charged with the duty of asserting the rights of the nation, and he is furnished with the means. He is commander in chief of the army and fleet ; and it is his duty to see that the laws (which include treaties) be faithfully executed. (o) ((o) Extract from a speech of Mr. Gallatin, in 1800.

" I will also admit that the President is bound to see the laws and treaties faithfully executed ; and, so far as his powers extend, to cause them to be executed."

From a speech of Mr. E. Livingston, in 1800.

" He (the President) possesses the whole executive power. He holds and directs the forces of the nation. Of consequence, any act to be performed by the force of the nation, is to be performed through him. He is charged to execute the laws. A treaty is a law. He must then execute a treaty, where he and he alone possesses the means of executing it.")

He may therefore possess, on behalf of the United States, whatever another power by treaty authorises the United States to possess. He may go beyond the jurisdiction of the United States whatever the law of nations or treaties authorise the United States there to do. He cannot seek satisfaction by war. He cannot make reprisals. But he may assert a specific right; or take possession of a specific thing, claimed by the United States. Thus, the President Madison took possession of West Florida, claimed by the United States, and also by Spain. By his order, Wilkinson took the fort of Mobile from a Spanish officer. Force was to have been used, but the place was obtained by capitulation. I doubt not those proceedings had the entire approbation of the Speaker, (Mr. Clay,) who very ably advocated the claim of the United States to that province.(p)((p) Extract from Mr. Clay's speech, on the occupation of West Florida.

" I have no hesitation in saying, that if a parent country will not or cannot maintain its authority in the colony adjacent to us, and there exists in it a state of misrule and disorder menacing our peace ; and if, moreover, such colony, by passing into the hands of any other power, would become dangerous to the integrity of the Union, and manifestly tend to the subversion of our laws, we have a right, upon eternal principles of self-preservation, to lay hold of it."

Extract from Gen. Jackson's despatch, 2d June, 1818.

" The immutable principles of self-defence, justified, therefore, the occupancy of the Floridas ; and the same principles will warrant the American government in holding it until such time as Spain can guarantee, by an adequate military force, the maintaining her authority within the colony."

I therefore conclude that all the rights which the United States had to do the acts which have been done in Florida, is vested in the President, the executive branch of the government.

The next enquiry which I propose to make, is, Has General Jackson transcended his orders, or violated the law of nations ?

In examining this question, it is necessary to see, in the ifrst place, what were his orders. On examining the orders under which General Jackson acted, I find them to be as follows :

" 26th Dec. 1817. To adopt the necessary measures to terminate a conflict which it has ever been the desire of the President, from considerations of humanity, to avoid ; but which is now made necessary by their settled hostilities."

" 16th Jan. 1818. To terminate speedily the war with the Seminoles ; and with EXEMPLARY PUNISHMENT for hostilities so unprovoked ; the honor of the United States requires it."

" 29th Jan. 1818. To put a speedy and successful termination to the Indian war."

" 6th Feb. 1818. To terminate the rupture with the Indians as speedily as practicable : to restore peace on such conditions as will make it honorable and permanent. The HONOR of our army, and the interest of our country require it."

In an order issued previous to all those which I have quoted, to wit, on the 16th December, 1817, and addressed to General Gaines, he is allowed to march across the Florida line, and attack the Indians within its limits, should it be found necessary, " unless they should shelter themselves under a Spanish fort. In the last event, you will immediately notify this department." This event never did happen; the Indians did not shelter themselves under a Spanish fort. And the event never having happened, the orders are to be understood as if no such clause was contained therein. This clause cannot be construed into a prohibition to possess himself of the forts of Florida, if necessity, or hostilities, justified the Commanding officer to do so, according to the law of nations.

These orders communicated to General Jackson all the authority to act in Florida that the President of the United States could confer. And I have contended that the President possessed the whole authority of the United States to act in Florida, in the suppression of the Seminoles, whether derived from the law of nations or from treaties.

I will consider the objections that have been made to the proceedings of General Jackson : 1. In occupying St. Marks. 2. In occupying Pensacola. 3. In executing Arbuthnot and Ambrister. But here let me remark, that the President has refused to censure or punish General Jackson for his proceedings in Florida ; and thus takes upon himself the responsibility for them. It is the President that is responsible to Congress ; and we should not turn aside from him to censure a subordinate officer. It is against the President that we should direct our measures, if we take any. He has applauded General Jackson's motives, and excused his actions ; and it is not for us to condemn them. The House may impeach, and the Senate may try the President ; but General Jackson is not responsible to either.

Let us see if General Jackson was not justifiable in occupying St. Marks. I have attempted to shew, that, as the United States had been compelled, by the delinquency of Spain, to do the duties of Spain, they were entitled to the possession of the means ; and so entitled to the possession of the fort of St. Marks, as a means of restraining the Indians. I have also shewn that, by the law of nations, necessity authorises the temporary seizure of a place, for preventing the enemy from seizing this place, when the neutral sovereign is unable to defend it.(q) ((q) Vattel, 315.) To require that the exercise of this right should be preceded by a declaration of war, is to deny the right altogether, which is to take possession of the fortress of a neutral power. The Indians and negroes had threatened to occupy St. Marks,(r) ((r) Documents, 91.) and premeditated seizing that post.(s) ((s) Documents, 56, 68,m81, Luengo's letter.) Five hundred of them had approached it, to the alarm of the commander.(t) ((t) Documents, 80.) The case in which it is justifiable to seize a neutral post, existed. The General therefore stands fully justified in the seizure of St. Marks. Thus, the great Frederick, having ascertained the intended invasion and partition of his dominions, by Russia and Austria, took Dresden in depot, that he might be before-hand with his enemies.

I will pass from St. Marks to the occupation of Pensacola. The orders of General Jackson were to " adopt the necessary measures" to procure a speedy and effectual termination of the war, and a peace on such terms as would be permanent, and honorable to the army and the United States. But the war could not be speedily terminated, if the Spanish Governor of Pensacola abetted, encouraged, and supplied the savages, and obstructed the arrival of supplies for the American army. The possession of Pensacola was necessary to the execution of his orders.

Provisions may be seized by force when necessary.(u) ((u) Vattel, 166.) Then a post may be occupied which obstructs their arrival. The Spanish commandant of Pensacola having endangered

the existence of the American army, by detaining their supplies of provisions, it was necessary that he should be deprived of the power of doing the same again, during the continuance of the war.

General Jackson was reminded, in his orders, of the honor of the United States, and the honor of the army. His duty to preserve both inviolate was thus particularly impressed upon him. While engaged in suppressing the Seminoles, and thus performing what it was the duty of Spain to have done, he was ordered by the Governor of Pensacola to retire with his forces from West Florida, with a threat to use force to compel him, if he did not comply.(v) ((v) Documents, p. 116.) Will any member say, that, on receiving this order, Jackson should have fled ? Ought he to have forgot the HONOR of the United States, the HONOR of the American army, so lately and particularly recommended to his safe-keeping, and fled from West Florida, before the Spanish cross, to avoid the arms of Don Jose Mazot ? I presume no one would say he should have fled. Whatever doubt there may be as to the necessity or legality of taking possession of Pensacola before the Governor issued this menace, there was none afterwards. General Jackson at once saw that if he retired, he retired in disgrace, the honor of the United States, and that of the army tarnished, and his orders shamefully violated. It became necessary that he should deprive Mazot of the means of carrying his threat into execution. A threat which, if he should not attempt to execute against General Jackson himself, while his army remained in full force, it now became extremely probable that he would carry into execution, with the aid of the savage and negro enemy, against the diminished force which General Jackson might leave in Florida. The immediate occupation by General Jackson of the fort of Barrancas, was the necessary and proper result of the hostile declaration of Governor Mazot.

Such a threat is a declaration of hostilities. If it is made by one sovereign to another, it is the commencement of war. Such a declaration, made by the king of Prussia to the emperor of France, commenced the war in which was fought the battle of Jena, which brought the Prussian monarchy to the brink of ruin. The French battalions could not fly out of Germany before the Prussian eagle. Sir, such a threat is not merely a declaration of hostilities ; it is even regarded as an attack, and gives to him who is threatened the defensive, although he should strike the first blow.(w) ((w) Martens, 273.) The possession of Pensacola became indispensable, by the threat of Governor Mazot, to the execution of General Jackson's orders, to the preservation of the honor of the army, and to its security.

But it is said that General Jackson made war against Spain : and it is said that all violence is war. This is a mistake. We know that the United States are not at war with Spain, although General Jackson has exerted some force against the Governor of Pensacola, on the declaration of hostilities made by the latter. Public war exists between nations. The right of making such a war belongs only to the sovereign power. But it sometimes happens that the commander of a portion of the armed force, finds, or supposes that he finds, the exercise of violence necessary against some portion of the public force of another power, although no war exists between the two nations.(x) ((x) President Madison ordered the naval commanders to take no insult, either as regarded the matter or the manner.) Such acts of force may indeed have a tendency to produce public war between the nations ; they become subjects of discussion ; they may be justified or they may be disavowed. Thus, in 1754, Major Washington, with 100 men, erected a fort on the Ohio, where he was attacked by De Villier, a French commander, with 900 men, and obliged to capitulate. Yet war, public war, did not commence between the two nations until 1755. In 1750, events took place between the forces of England and France, in Nova Scotia, bearing some resemblance to those which lately occurred in Florida. Major Lawrence, with a strong force, advanced to reduce some insurgents called French neutrals, who were in the habit of instigating the Indians to attack the English inhabitants ; those insurgents fled and took protection with the French commander, Monsieur La Corne, who commanded 1500 men. Lawrence forbore to attack him because he was unable ; but enquired on what principle he protected the insurgents. La Corne answered, that he was ordered to defend that post, and would obey his orders. The historian adds, that, " during the years 1751 and 1752, the Indians and their coadutors continued to disturb, plunder, and butcher the new colonists ; in their expeditions they were countenanced and supported by the French commanders, who always supplied them with boats, arms, and ammunition." If no direct hostilities took place there between the English and French

commanders, we are informed what the reason was. The historian tells us that the English commander knew " that he was unable to cope with such a force in the open field." (y) ((y) Bisset's George 3d, vol. 1. p. 118.)

In 1794, Governor Simcoe built a fort at the rapids of the Maumee. This fort we know General Wayne was allowed by President Washington to take, if it impeded his operations, although there was no war between the two nations. Wayne, in his despatches, said he would have stormed it had a gun been fired. He no doubt would have stormed it had Major Campbell threatened to drive him out of the country, as Mazot threatened to drive General Jackson. An action took place between the Leopard and the Chesapeake ; but that did not produce public war between the two countries. Another action took place between an American frigate and the Little Belt ; yet the nations remained at peace. These events shew that acts of violence occurring between commanders of portions of the armed force of different countries, each asserting the rights or maintaining the pretensions of their respective governments, are not such acts of war as must be preceded by a declaration of war. Such acts will happen, in whatsoever hands the war-declaring power may be vested. They are not effects of war ; they may be subjects for reparation.(z) ((z) Vattel, 293.) You are about to establish a post at the Yellow Stone river ; perhaps another at Galveztown ; and possibly at the mouth of the Columbia river. The commanders may be brought into collision with the commanders of the forces of other nations ; they may fight long before you can hear of such collision, and yet the nations may remain at peace. But it has been said by the Speaker, (Mr. Clay,) on another occasion, that the right of levying taxes has been wrested from Congress. I suppose that the allusion was to the establishment of a custom-house at Pensacola, and that that constitutes one of the objections to be urged against the proceedings of General Jackson. Whatever may be said of the authority of the General to establish a custom-house at Pensacola, the act is no usurpation on the power of Congress, unless it can be shewn that Congress possessed the right to establish a custom-house at Pensacola. I do not perceive that Congress possess the right. The power of Congress to legislate is confined to the American territories, and the objects enumerated in the constitution. I conceive that Congress can exercise no power over a territory acknowledged by them to belong to a foreign power. If treaties or the law of nations give the United States a right to act within the territory of a foreign power, in peace or in war, it is the Executive that must so act. The British commander at Castine established a custom-house there during the late war ; it was not established by the British parliament. Where one nation by its arms occupies any part of the territory of another, it is usual to collect the duties, and let the magistrates administer the laws. The right results from the temporary possession. If that possession is wrong, all its consequences are so ; but if the possession is right, its necessary consequences are also right. Whatever facts and arguments will maintain the right to take possession of a place, will support the right of the possessors to maintain in operation the usual or necessary laws. And therefore, whether the American military force in possession of Pensacola might collect the usual customs or not, depends on the former question, whether they had a right to take possession or not.

(Debate continued on second page.)

DEBATE ON THE SEMINOLE WAR.

CONTINUED.

HOUSE OF REPRESENTATIVES

JANUARY 21

Speech of Mr. Alexander Smyth Concluded.

I will next consider the objections made to the conduct of General Jackson, in the execution of Arbuthnot and Ambrister.

Some of my arguments on this branch of the subject, have been anticipated by the honorable member who has preceded me, the chairman of the military committee, (Mr. Johnson, of Kentucky,) and it gives me satisfaction to find that my opinion agrees with that of a gentleman who is as much distinguished by his humanity as by his valor.

My observations will chiefly relate to the case of Ambrister, as the proceedings against him have been the most censured ; and what is said of his case will in the general apply to that of Arbuthnot.

I will attempt to maintain that Ambrister was an outlaw, making war without authority, instigating savages to an unlawful war, a leader of banditti, and liable, by the law of nations and the usages of war, to suffer death.

It was found by the special court martial, that Ambrister had led and commanded Indians in carrying on war against the United States, being a British subject. Peace exists between all the citizens of the United States and all the subjects of Great Britain ; and the Englishman who counsels, aids, or abets savages to massacre the people of the United States, is a murderer.

It is the laws of war, a branch of the law of nations, that gives to the commanding general a right to put prisoners to death, either for a violation of the usages of war, or by way of retaliation. In the one case, they die for their own crime, and their punishment is just ; in the other, they are put to death for the crimes of their party, and their punishment is justified by policy.

Among the crimes against the laws of war, for which a prisoner may justly die, are, 1. Making war without authority, the war being lawful. 2. Making war, if the war is unlawful. 3. Using means contrary to the laws of war.

That article of the laws of war that provides that he who fights without authority is liable to suffer death, seems not to have been rightly understood by either branch of the military committee : but it is a rule well established, and very beneficial to humanity. General Jackson seems to me to have entertained a correct idea of the rule, but not to have taken time, when giving his order for the execution of Ambrister, to express himself with sufficient clearness. I should interpolate the rule as laid down by him, and make it read thus : " It is an established principle of the law of nations, that any individual of a nation making war against the citizens (or soldiers) of another nation, the nations being at peace (and having no authority by being in the service of a power making a lawful war) forfeits the protection of his government ; and becomes an outlaw (or robber, if he makes war by land) or a pirate, (if he makes war by sea.)" The rule thus amended is equally applicable to the case of Ambrister, as in the form expressed by General Jackson. And it is fully established by the writers on the law of nations.

Ambrister, being the subject of a power at peace with the United States, of his own free will, without any authority from any government, has dared to make war upon the United States. Let us hear what the writers on the law of nations say on this case. National war is a conflict between nation and nation. It never can be undertaken or carried on but by the authority of the sovereign.(a) ((a) Martens, 272.) Therefore subjects cannot act therein of themselves, and without the sovereign's order they are not to commit any hostility.(b) ((b) Vattel, 365.) The necessity of a particular order is so thoroughly established, that even after a declaration of war between two nations, if the peasants of themselves commit any hostilities, the enemy, instead of sparing them, hangs them up, as so many robbers or banditti.(c) ((c) Vattel, 366.) The violences committed by the subjects of one nation against those of another, without authority from their sovereign, are now looked upon as robberies ; and the perpetrators are excluded from the rights of lawful prisoners.(d) ((d) Martens, 272, 280, 284.)

It appears therefore that, had war actually existed between the United States and Great Britain, and Ambrister had, without authority from his government, committed hostilities against the United States, he would have been justly considered as a robber, and liable to be hanged by order of the commanding officer into whose hands he had fallen.

The rule of the law of war, that no one is to fight without authority, was asserted by the enemy in the war of our revolution, in the case of Col. Ethan Allen. He advanced against Montreal, with a few volunteers ; his party was routed, and he himself made prisoner ; and, under pretext of his having acted without authority, he was thrown into irons, and sent to England as a traitor.(e) ((e) Marshall's history, 3d vol. 22.)

Those who kill an enemy in war are excused in consideration of their acting in the performance of their duty. But those who fight contrary to their duty, or without its being their duty, the laws of war equally condemn as the deserter, him who has broken his parole, or him who fights without authority.

War being a great calamity, they well deserve to die who violate those laws which have been agreed upon by civilized nations for the purpose of diminishing its horrors. War is sufficiently destructive

when its operations are confined to those who are authorised to prosecute it by the government ; but how horrible would it be, if every person belonging to one power, had a right to attack and kill any person belonging to the other. And if that man may be lawfully and justly put to death, who, without authority, attacks the soldiers of the enemy, how much more does that man deserve to die, whose acts of undistinguishing massacre.

The law of nations is, that the subject of a neutral power who wages war by land is punishable with death, unless he is in the service of a power carrying on a regular war. And nations have gone further as to war carried on by sea, and agreed, generally, that not even a commission shall exempt from the punishment of death him who, being the subject of a neutral, exercises hostilities by sea. But the committee say, Arbuthnot and Ambrister were " acting with a power acknowledged independent by us." I can by no means agree with the committee. Look at the constitution ; Indians are spoken of as a part of our population. Look at our treaty with Spain ; each party engages to restrain the Indians within their territory ; and those in Florida are spoken of as the Indians of Spain. Look at our treaties with the Indians ; they acknowledge themselves to be under our protection ; and consequently they owe us allegiance ; for protection and allegiance are reciprocal. Refer to the notes of our commissioners at Ghent, which are among the ablest state papers that have appeared ; you will find the following passages : " If the United States had now asserted that the Indians within their boundaries, who have acknowledged the United States as their only protectors, were their subjects, living only at sufferance on their lands, far from being the first in making that assertion, they would only have followed the example of the principles uniformly and invariably asserted in substance, and frequently avowed, in express terms, by the British government itself. The United States claim, of right, with respect to all European nations, and particularly with respect to Great Britain, the entire sovereignty over the whole territory, and all the persons embraced within the boundaries of their dominions." All this tends to prove that the Indians are subjects, or subject communities, owing allegiance to the United States. The proposition affirmed by the minority of the military committee, that white men may enter into the service of Indians, and that they thereby become entitled to the same treatment in all respects as the Indians, I do not admit. I contend that a treaty of peace with Indians would not shield from a prosecution a white man, the subject of a neutral power, who had associated himself with the Indians, and killed a citizen within the jurisdiction of a state.

Volunteers are allowed to serve foreign powers. Let us see why this custom has become a part of the law of nations. " The noble view of acquiring instruction in the art of war, and becoming more capable of serving our country, has introduced a method of serving as volunteers even in foreign armies ; and the custom is doubtless justified by the sublimity of the motive."(f) ((f) Vattel, 367) But this sublime motive will not justify the civilized man in entering into the service of the ferocious and murdering savage, to learn the use of the hatchet and the scalping knife.

Ambrister did not, by coming to Florida, owe allegiance to Bowlegs or to Hillishajo. He continued the subject of Great Britain ; and he owed temporary allegiance to the king of Spain. By aiding savages to carry on war against the United States, he violated the British treaty, the Spanish treaty, the law of nature, the law of nations, and the laws of war, and justly suffered death.

It is only in lawful wars that those who are taken are entitled to the treatment of prisoners of war. A war, to be lawful, must be undertaken by the sovereign power.(g) ((g) Vattel, 296, Martens, 272.)

There must be lawful authority for making it, and apparent just cause. It must not be merely an incursion for havoc and pillage. An individual cannot wage lawful war against a nation ; he is a robber. A family cannot ; they will be robbers. A tribe of savages cannot ; they may be treated as enemies of the human race. " Nations which are always ready to take arms on any prospect of advantage, are lawless robbers ; but they who seem to delight in the ravages of war, who spread it on all sides without any other motives than their ferocity, are monsters unworthy the name of men. All nations have a right to join in punishing, suppressing, and even exterminating such savages."(h) ((h) Vattel, 282, 151, 152.) This is the language of the law of nations. Then, as the Seminole savages could not themselves make a lawful war against the United States, their chiefs, Bowlegs and Hillishajo, could not communicate such a right to Ambrister.

If Great Britain had been at war with the United States, and Ambrister, her subject, had exercised

hostilities against them, without authority from his government, the laws of war condemn him to die, as has been clearly shewn.(i) ((i) Martens, 280.) Surely the circumstance of his nation being at peace with us, does not increase his rights ; it only increases his guilt.

I would go still farther, sir, but for this I have no express written authority in point ; I would rely on reason and analogy. I say if Nicholls had been taken during the late war, with his Britannic majesty's commission in his pocket, when engaged in exciting savages to massacre the peaceful citizens of our frontiers, he would have deserved to have been hanged for using means contrary to the laws of war. The principle I contend for seems to have been acted on in the case of Col. Hamilton, the British commander of Vincennes, in the war of the revolution. That officier having excited the Indians to war against the frontier settlers, was attacked by Col. Clark, and surrendered himself and his garrison prisoners of war. The historian tells us, that " with a few of his immediate agents and counsellors, who had been instrumental in the savage barbarities he had encouraged, he was, by order of the Executive of Virginia, put in irons, and confined in gaol."(j) ((j) Marshall's history, 3d vol. 516.) There are certain means, the use of which is contrary to the laws of war ; as poisoning, assassination, entering the camp of an enemy in disguise, as spies, or with intent to poison, assassinate, or corrupt ; soldiers guilty of any of these offences are liable to suffer death ; and I would add, to the list of unlawful means, exciting savages to war. Our commissioners at Ghent declared that " the employment of savages, whose known rule of warfare is th indiscriminate torture and butchery of women, children, and prisoners, is, itself, a departure from the principles of humanity observed between all civilized christian nations, even in a war." Then let this practice be terminated. That is to be effected by the exemplary punishment of every instigator of Indian hostilities.

I cannot perceive any ground for the comparison made between the cases of La Fayette, Kosciusko, Pulaski, and De Kalb, with those of Arbuthnot and Ambrister. Do those who make this comparison find any likeness between the United States and the Seminole tribe of savages ? The war of the revolution was carried on as a civil war, in which the treatment of prisoners is the same as in a regular war between two nations.(k) ((k) Vattel, 282.) And as foreigners are allowed to enter into the service of either party in such a war, they were consequently entitled to treatment similar to that which other prisoners of their party received.

Having considered the liability of Ambrister to suffer death, for a violation of the laws of war, in exercising unlawful hostilities, I will next consider his liability to be put to death by way of retaliation, as a person incorporated with the enemy.

I lay down, with regard to the savages, this rule of warfare. Whatever degree of force, whatever destruction, whatever punishment for violating the usages of war or by way of retaliation, is found necessary to deter them from robbing our citizens, and massacring our women and children ; that force, destruction, and punishment, they should be made to feel and no more. So much we have an undoubted right to inflict on the principle of self-preservation. And if we do not inflict so much, we fail in our sacred duty to preserve the people.

I find this opinion fully supported by the authority and example of the greatest man this country or any other country has produced, General Washington, who knew when to silence pity, if its exercise was injurious to his country, did not consider the usages of war, or the principles of humanity, as applicable to a war carried on for the punishment of the unprovoked and atrocious hostilities of savages.(l) ((l) Vattel, 240.) In his order to General Sullivan, directing his operations in the Indian country, I find the following clauses :

" The expedition you are appointed to command, is to be directed against the hostile tribes of the Six nations of Indians, with their associates and adherents. The immediate objects are the total destruction and devastation of their settlements, and the capture of as many prisoners of every age and sex as possible."

" I would recommend that some post in the centre of the Indian country be occupied with all expedition, with a sufficient quantity of provision, whence parties should be detached to lay waste all the settlements around, with injunctions to do it in the most effectual manner, that the country may not merely be OVERRUN, but DESTROYED."

" After you have very thoroughly completed the destruction of their settlements, if the Indians should

shew a disposition for peace, I would have you to encourage it, on condition that they will give some decisive evidence of their sincerity, by delivering up some of the principal instigators of their past hostilities, into our hands Butler and Brandt, the most mischievous of the Tories that have joined them, or any other they may have in their power, that we are interested to get into ours."

" But you will not, by any means, listen to overtures of peace, before the total ruin of their settlements is effected."

" Our future security will be in their inability to injure us the distance to which they are driven, and the terror with which the severity of the chastisement they receive, will inspire them peace without this would be fallacious and temporary."

" When we have effectually chastised them, we may then listen to peace ; and endeavour to draw further advantage from their fears.;"

Such were the orders given by General Washington for inflicting exemplary punishment on the savages. Let us see how they were executed. " Every lake, river, and creek, in the country of the Six nations, was traced for villages ; and no vestige of human industry was permitted to remain. Houses, corn-fields, gardens, and fruit trees, shared one common fate. Eighteen villages, a number of detached buildings, one hundred and sixty thousand bushels of corn, and all those fruits and vegetables which conduce to the comfort and subsistence of men, were utterly destroyed.(m) ((m) Marshall's history, 100.) On receiving the communications of General Sullivan, Congress passed a vote of approbation of his conduct, and of that of the army."

Had Brandt and Butler fallen into the hands of General Washington, they would no doubt have met the fate of Arbuthnot and Ambrister. So resolved was General Washington that a severe example should be made, that he would not even listen to proposals of peace, until it had been done. In the present case also the punishment inflicted was for example ; to preserve the peace of the frontier ; to preserve from the hatchet and scalping knife women and children. Many will be saved by the example : But, should only one be saved, Arbuthnot and Ambrister have not died in vain.

Retaliation may be exercised even on the innocent, where the enemy have been guilty of a violation of the usages of war.(n) ((n) Vattel, 321, Martens, 283.) A prisoner of war may sometimes be put to death to punish a nation that has violated the laws of war. (o) ((o) Martens, 238.) Whenever the enemy sets us the example of departing from the laws of war, we are at liberty to follow it.(p) ((p) Martens, 279.) General Washington, in devastating the Indian country, and in the case of Sir Charles Asgill, who was marked for death by lot, as a retaliation for a crime committed by an English captain, acknowledged the force and expediency of the law of retaliation. The Congress of the revolution,(q) ((q) Marshall's hist. 3d vol. 391.) the Congress during the administration of Mr. Adams, (r) ((r) 3d vol: laws, 284.) and the Congress during the administration of Mr. Madison, (s)

((s) 4th vol. laws, 536) all acknowledged the expediency of retaliating, even on the innocent, the outrages and ill usage committed on prisoners by the enemy.

It is denied that the right to retaliate is vested in the commanding general ; and the acts of Congress authorising retaliation by the President, are cited to prove that the right is not in the general. But it is the commanding general that is declared by the law of nations to possess this right ;(t) ((t) Vattel, 321, Martens, 283.) and the proceedings of General Washington, with respect to Sir Charles Asgill, prove that he considered himself as possessed of the right. In such a case as that, the writers on the law of nations recommend clemency.(u) ((u) Vattel, 321, 322) Such clemency did save Sir Charles Asgill. General Jackson had no occasion for its exercise. He never marked the innocent for retaliation. He made examples only of the guilty.

The acts of Congress passed during our two last wars, were expedient to remove all doubts of the right of the President to retaliate on French and British prisoners ; and it was necessary that the retaliation in those cases should be by his order, as there was no commander who could claim the authority in those cases. And in both those cases the cruelties intended to be retaliated were perpetrated by the authority of the foreign governments. But usually this right to retaliate should be left to the commanding general : for it is inexpedient to introduce into the cabinet, which should be composed of men of peace, the work of blood.

The committee come to the conclusion that general Jackson acted unlawfully, but supposing that the special court or board of officers appointed to investigate the facts in the cases of Arbuthnot and Ambrister, were a general court martial, appointed to try and determine offences under the articles of war. If that were so, the second sentence of the court in Ambrister's case, that he should receive fifty stripes, and be confined with a ball and chain to hard labor for twelve calendar months, is contrary to law ; and therefore void : For an act of Congress has repealed so much of the articles of war as authorises the infliction of corporeal punishment by stripes.(v) ((v) Acts of May, 1812.) But the court was not appointed under the articles of war. It was neither a general nor a regimental court martial. Its authority was derived from the order of the commanding general; and was to investigate charges, and record their opinion as to the guilt or innocence of the prisoners; and what punishment (if any) should be inflicted. The law under which Ambrister was punished was the laws of war. Those laws do not authorise the infliction of torture. Therefore, the second sentence, to inflict stripes and labor at a ball and chain, is illegal and void. Whatever law the court was appointed and acted under, the second sentence is unlawful and void ; consequently, the first sentence, that Ambrister should suffer death by being shot, was the only legal sentence, and properly carried into execution.

But should you allow to the second sentence the effect of setting aside the first, then the facts will have been found, and there will be no sentence; and the order of the general for the execution of Ambrister will rest on and stand justified by the laws and usages of war.(w) ((w) Vattel 297, 391, 325, 365, Martens 269, 280, 285.)

There is a very remarkable resemblance between the proceedings of general Washington in the case of Andre, and the proceedings of general Jackson in the cases of Arbuthnot and Ambrister. General Washington, in his order to the court, says to them, " after a careful examination, you will be pleased, as speedily as possible, to report a precise state of his case, together with your opinion on the light in which he ought to be considered, and the punishment that ought to be inflicted." General Jackson appointed the special court " for the purpose of investigating the charges" against the prisoners, directing them " to record their opinion as to the guilt or innocence of the prisoners, and what punishment (if any) should be inflicted." The substantial agreement is very remarkable; nor is it easy to distinguish between the cases so as to censure the one of these generals without censuring the other. One of the criminals was a spy, and in manners a polished gentleman; the other was a brigand, carrying on hostilities at the head of Indians and Negroes. They were equally offenders against the usages of war, and with equal justice suffered death.

Andre died by the sole authority of the commanding general, according to the usages of war. No court martial had authority to try him, as appears from the order which was given, not to try and determine, but to report a state of his case and an opinion. Now, indeed, the trial of spies by a court martial is expressly authorised by an act of Congress.

Ambrister died by the sole authority of general Jackson. No court martial had power to try him by any law of the U. States. But the committee say, that, "wherever severity is not absolutely necessary, mercy becomes a duty. A similar expression is used by the writers on the law of nations in regard to retaliating on the innocent for the guilt of others; but that is not this case. What mean the committee by " absolute necessity ?" The nation indeed was not in danger : nor was it in danger when Andre died; and according to the reasoning of the committee, general Washington should have pardoned Andre: but Andre suffered, because the case required that the example should have its full effect; and so it was required in the case of Ambrister. Where pardon will have a pernicious effect on the interests of society, mercy becomes weakness and folly.

As general Jackson is censured for the execution of Ambrister by some, so there were some who censured general Washington for the execution of Andre. Let us hear the British historians mourn over the fate of their favorite. " Andre, finding his doom unavoidable, wrote a most pathetic letter, praying that he might not die the death of a common malefactor, but by a mode more befitting a soldier. Even this small boon was refused to a generous enemy, by the inexorable rigor of stern republicanism. On the 22nd of October the ill-fated hero met his death, with a composure, serenity, and fortitude, worthy of conscious innocence, suffering unmerited punishment."(y) ((y) Bisset.) Who could suppose on reading this that Andre was carrying on a most infamous negotiation, disguised as

a spy, under a false name, with the disclosures of a traitor concealed in his boot? And who that should hear the regret expressed for the fate of Arbuthnot could suppose that he was the author and prime mover of the Seminole war, in which some hundreds of our men, women, and children, have been massacred in the most cruel manner?

It is alleged that those incidents, the execution of Arbuthnot and Ambrister, are at variance with the principles of our constitution and laws. Our constitution and laws were formed for the people of the United States. They have no force in Florida. Ambrister and Hillishajo never came under the shade of the umbrella of the constitution. "They should," says the honorable Speaker, (Mr. Clay) "have been turned over to the civil authority. So soon as the stranger treads the American soil, he is encircled by the laws." I answer, there was no civil authority having jurisdiction of their cases, to which they could have been turned over. They never did tread on that portion of American ground where laws protect enemies in time of war. They did not protect Sir Charles Asgill; they did not protect Andre, or the emissaries who sought to corrupt the soldiers of the Pennsylvania line. Our constitution and laws have not changed the laws of war. Let me advise you to make no attempts to change those laws. A single nation, however great, cannot change the law of nations. You may trammel your defenders, and prevent them from using their rights for your protection, according to the usages of war; but you will at the same time leave the enemy at full liberty to exercise their acknowledged rights. You cannot increase your rights under the law of nations; you can only diminish your rights by legislating respecting them; and that would be improvident. If any change is to be made in the laws of nations, let it be done by treaty.

Sir, you must allow your army to act against the enemy as other armies act, when engaged in war. You put the same arms into their hands; they must be allowed to use them in the same manner. Nor do the principles of our laws require that the worst of criminals, the instigators of a thousand incendiaries, robbers, and assassins, should go unpunished, merely because, as the lenient committee say, there is no "absolute necessity" that the offenders should die. We might pardon all the murderers whom we hang, and the thieves whom we confine; yet the nation would exist. There is no absolute necessity for punishing them: But the principles of our laws require, that, for the good of society, and the safety of the people, no crime shall go unpunished: that punishment shall certainly follow crime.

It has been said that there is no instance to be found in our history, previous to the Seminole war, of retaliation upon Indians. The assertion is not correct in point of fact. I have lately seen published an account of the hanging, in one of the northern states, many years ago, of some Indians. The people have often discovered a disposition to retaliate on the Indians; and some examples of that kind have been set, unworthy of imitation; as the massacre of the Indians at Lancaster by a body of men called the Paxton boys. (b) ((b) The massacre of the Shawanee Chief, Cornstalk, on the Ohio; of the Cherokee Chief Hangingmaw, on the Tennessee; and of Logan's relations, on the Ohio.) Let me here again remark, that the white men and Indians punished by General Jackson, were punished for their own crimes. So, in the war of the revolution, Walter Butler, a leader of Indians, was denied quarter, and put to death. (c) ((c) Judge Marshall, in his history, says, "His entreaties for quarter were disregarded, and he fell a victim of that vengeance his own savage temper had directed against himself." 4th vol. Appendix 13.) At King's mountain, ten of the Tories taken in that battle, who had violated the usages of war, were immediately hanged for their crimes. There are other instances of very prompt punishment having followed violations of the usages of war; as the immediate punishment of the emissaries sent by Sir Henry Clinton to corrupt the soldiers of the Pennsylvania line, and of the ringleaders of the mutiny of the Jersey troops, who were, by order of Gen. Washington, shot without the formality of a trial. (d) ((d) This, so far as relates to the emissaries, is perhaps incorrect. Judge Marshall says they were tried, condemned, and immediately executed as spies. General Washington ordered General Howe, as soon as the Jersey mutineers should surrender, to seize a few of the most active leaders, and to execute them on the spot. These orders were promptly and implicitly obeyed. 4th Marshall, 368.)

I will now, sir, say a few words in reply to some of the observations of gentlemen who have preceded

me on the opposite side of the question.

My honorable colleague, who made the report, (Mr. T. M. Nelson) protests against the power of retaliation being vested in a commanding general ; and the honorable Speaker (Mr. Clay) says the power of retaliation is in those who raise armies, and make rules for their government. Congress has repeatedly acknowledged the usages of war;(e) ((e) 4th vol. Laws, 536. ) and the usages of war expressly vest the power in the commanding general(f) ((f) Vattel, 321.) The Congress of the revolution declared the power to be in the commanding general. The nature of the power, which is not to make a rule, but to apply it, requires that it should be vested in the commanding general, or in the President, as commander in chief. What is to be done ? It is to be determined that retaliation is necessary ; the object for retaliation is to be designated, and executed. This requires no legislative power ; for the rule exists by the laws of war. It requires no judicial power ; for the retaliation we now speak of, is supposed not to fall on particular guilt. The whole is properly an exercise of executive power, especially belonging to the general, for the safety of whose army it is executed, and who has the best means of knowing its necessity. There is no foundation for the claim which the honorable Speaker (Mr. Clay) makes on the part of Congress to the power of retaliation. It is true, Congress can make laws for the government of the army in all places ; but the laws thus made will be prospective ; and should Congress make a rule on the subject of retaliation, the application of that rule (in which consists the power of retaliation) must still be left to others. But Congress have not legislated on the subject in the present case ; the laws of war furnish the rule, and leave its application to the commanding general.

It has been urged by the Speaker, that it has been the uniform usage of the country not to retaliate on Indians. I answer, that if this were so, as it is not, and the government or people, from beneficence, have refrained from retaliation on the savages, desiring to gain them by kindness, and that is now found impracticable ; it is the more necessary, as well as justifiable, now to use the means allowed by the law of nations. It is for the punishment of an inhuman people, such as the Seminoles, that this law is provided. The writers say, " As a prince or general has a right of sacrificing the life of his enemies to his safety, and that of his men ; if he is engaged with an inhuman enemy, who frequently commits such enormities, he appears to have a right of refusing life to some of the prisoners he may take, and of treating them as his were treated." (g) ((g) Vattel 321.) This law is obviously intended for the punishment of savages ; and the more incorrigible the Indians are, and the greater the forbearance of the United States, the more necessary now is the exercise of the power in question.

We ought not to confound the right of retaliation with the right of punishing an enemy who has, in his own person, committed crimes against the law of nations, and the usages of war ; and whose punishment is therefore, strictly just. All the persons punished by the order of Jackson, deserved to die for their own proper crimes, and were not put to death by way of retaliation, merely for the crimes of others.

Let me again call the attention of the committee to the order given on the 16th of January, under which Gen. Jackson acted : " The honor of the United States requires that the war with the Seminoles should be terminated speedily, and with exemplary punishment for hostilities so unprovoked." We have seen that Gen. Jackson, when acting at his own discretion, has spared the vanquished savages, even those concerned in the atrocious massacre at Fort Mimms : But his orders now directed him to inflict " exemplary punishment." He could not misunderstand them. Would you have the Secretary of War to be more explicit ? Would you have him to use the language of Galienus, or to write his orders with blood ?

It is said that the Indian chiefs who were hanged were not taken in battle, but by stratagem. The gentleman (Mr. Clay) who urges this circumstance against the propriety of their execution, would doubtless, with more reason, have urged the impropriety of executing an enemy, who had laid down his arms., when vanquished in fair combat, had that been the case. Was Andre taken in battle, or was he not taken by stratagem ? Were the emissaries of Clinton to the mutineers of the Pennsylvania line taken in battle, or were they not delivered up by those to whom they came ? Will the gentleman apply to Washington the epithet which he insinuates is due to Gen. Jackson ? Does it make any difference in what manner villains are taken, who are proper subjects for punishment ? I think not.

One of my honorable colleagues (Mr. Johnson) has introduced the correspondence between Gen. Jackson and Gov. Rabun. On that correspondence I did not expect to say any thing in this debate, as it is not before the committee ; but I am desirous of removing every prejudice against the general, and will briefly notice it.

The constitution provides that the President shall be commander in chief of the army and of the militia when called into the service of the United States ; that no state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay. Suppose a state to be invaded, in which case the state has a right to make war, and that the President and Governor both take the field will they be regarded as allies, or will the United States be regarded as the principal, and the state as an auxiliary ? Allies act in common concur in the appointment of a commander in chief and divide the conquests. The auxiliary has no share in the conquests, and the principal has the sole right to make peace. (h) ((h) Martens, 306, 307.) I think the state would clearly be regarded as an auxiliary only. Then the President being in the field by his lieutenant, to whom is committed power to command in the southern division of the United States, will not alter the right of the principal and the auxiliary. Perhaps Gen. Jackson was correct in his view of the authority of the governor. This is a question of a delicate nature, important, and not free from difficulty. I cannot say that I have made up my mind conclusively upon it, and desire to be considered as not committed. A divided command must prove most pernicious to the public interests.

A claim of right constitutes no ground of objection to an officer. It is a military principle that no officer can waive the rights of his rank and command. The chief objection to the correspondence between Gen. Jackson and Gov. Rabun arises from its temper, which does not exactly comport with the high standing of the parties. An apology for the manner in which Gen. Jackson wrote, will be found in the feelings excited by hearing that, in consequence of (although not in obedience to) an order, perhaps illegal, given by Gov. Rabun, the wives, fathers, and mothers, of the faithful warriors who were fighting by Gen. Jackson's side, had been massacred.

My colleague (Mr. Johnson) seemed dissatisfied with the Secretary of State, and asks if the Secretary of State has a right to threaten to take posts. I reply, that the Secretary has not done so. He has only said, that, if the necessities of self-defence should again compel the United States to take possession of the Spanish forts, an unconditional restoration of them will not be made. The Secretary of State has a right to negotiate. It is through him that this nation holds conversation with other nations. He may point out the probable future consequences of certain proceedings. Thus, at Ghent, our commissioners pointed out to those of England the future consequences of concluding a treaty that should impose on the United States injurious and degrading conditions. " It is impossible," say they, " that America should not, at the first favorable opportunity, recur to arms for the recovery of her territory, of her rights, of her honor."

The conduct of Gen. Jackson at New Orleans, during the invasion, when he declared martial law in force, has been mentioned as indicating an inclination to exert unnecessarily arbitrary power. An excuse for the general will be found in the imminent danger of the loss of the country, whose inhabitants had not then given any decisive evidence of attachment to the United States, and which was invaded by a powerful army. If martial law may be declared in force on any occasion, a more fit occasion can seldom arise.

Some youth who has been writing for the public prints, has said, that martial law never was declared in force in this country in the war of the revolution. The senior members of this House know that, in some of the states, the courts of justice were shut ; that every where the tories were whipped and hanged by martial law, that is, by the law of force : and even in the neighborhood of Philadelphia, under the observation of the commander in chief, Gen. Potter, as the historian tells us, (i) ((i) Marshall, 3d vol. 406.) was in the habit of whipping severely those citizens who supplied the British with provisions. When the nation is in danger, whatever obstructs its preservation must yield for a time. " Amidst arms the laws are silent."

The honorable Speaker (Mr. Clay) has caused to be read the treaty of Fort Jackson; a treaty which, he says, has imposed hard conditions on the Creek Indians; and to this he attributes the Seminole war. The war terminated by the treaty of Fort Jackson was one of the most ungrateful, unprovoked,

treacherous, and cruel wars that ever was waged by barbarians against their benefactors, who were gently leading them, by the hand of friendship, to civilization and happiness. Are we alone denied an indemnity for the expenses of unprovoked wars? Are we alone, of all the nations of the world, forbidden to deprive a cruel and perfidious enemy of the means of injuring us in future? The gentleman would have no acquisition made from the Indians except by purchase. I would ask the gentleman, in what manner was that beautiful country acquired of which he is one of the representatives? Look to the state of Ohio, there a country equal in extent and fertility with that acquired by the treaty of Fort Jackson, conquered from the Indians by Gen. Wayne, in a victory in which he killed 20 men. But the gentleman asks, what would be said to our unreasonable demands, were the treaty of Fort Jackson to be seen by the powers of Europe? And, I ask, who would presume to find fault with them? Would it be France, who has so lately demanded Spain, Portugal, Italy, Holland, and Germany? Would it be Russia, who so lately demanded Poland and Finland, and, within a century past, has demanded forty provinces? Or would it be Great Britain, who so lately demanded Trinidad and Ceylon, and is now demanding the residue of the East Indies? No, sir, those powers are otherwise engaged than to notice our demands of a just indemnity, by which we shall change a wilderness, through which barbarians roamed, to a cultivated and populous region, the abode of civilization and happiness.

But the gentleman exclaims, Spare them their prophets! spare them their religion! I hope the gentleman does not mean to bring religion into disgrace by prostituting her sacred and honored name, in conferring it on the practices of those vile deceivers, who have brought their tribe to ruin by instigating their warriors to massacre our women and children; those wretches whose frauds and falsehood had been sufficiently proved by the failure of their pretended prophecies.

Another objection to the treaty of Fort Jackson is, that it was signed by friendly chiefs, and only by a few of those who were hostile. I answer, that the power of the hostile chiefs was broken; they were killed or dispersed. A treaty with any nation or tribe must be entered into with the actual chiefs; and it can be no objection to a treaty of peace that those who signed it are friendly. I presume the treaty between France and the combined powers is valid, although entered into with the reigning monarch, whose throne those powers re-established.

I will now offer some objections to the resolutions proposed, as being in spirit contrary to the principles of the constitution. One of the most important safeguards of liberty to be found in our constitution, consists in the separation of powers. Nor, will any measure have a greater tendency to endanger the rights of the people, than uniting the different powers in one of the branches of government. You are called upon to pass something in the nature of an *ex post facto* law, or bill of attainder; measures abhorred and prohibited by the constitution. You interfere with the constitutional power of the President to select his officers, retain those with whom he is satisfied, and dismiss those with whom he is dissatisfied (j) ((j) This is a most dangerous attempt to transfer the responsibility of the military from the President to the House of Representatives.) You thus take away his responsibility. You take upon you to act as military judges; to censure, , consequently, to punish an officer who has had neither hearing or trial. You violate the principles of magna charta, principles deemed sacred wherever rational liberty exists, and condemn a citizen without the judgment of his peers, or the law of the land. You may applaud without a trial; for there is no rule that requires that trial shall precede applause; and in applauding you do but swell the voice of fame. But, if you censure without a trial, as censure is a military punishment, you violate that most important and well established rule of justice, which requires that none shall be condemned unheard. The law provides a mode in which officers may be censured and removed from office; but it is proposed to you to do, not what belongs to the power of legislation, but what belongs to the administration of the laws. Will you, in the controversy between the United States and Spain, throw your whole weight into the scale of Spain, and make that of your own country kick the beam? It is my choice to take the side of this nation, to support her rights, and the acts of her officers; and, I find it equally as agreeable to my conscience as my inclination to do so on this occasion. It is the union of the various parts of the government that constitutes its strength. Let us leave the Executive to act with all its energy against foreign powers, while we strongly restrain that branch from acting against the people. Shall we at the

very moment when a negotiation is depending with a foreign power, take the part of that foreign power? Be such conduct far from us! (k) ((k) Extract from the speech of Mr. Clay on the occupation of West Florida.

" Allow me, sir, to express my admiration at the more than Aristidean justice, which, in a question of territorial title between the United States and a foreign nation, induces certain gentlemen to espouse the pretensions of the foreign nation."

But what have been the motives of General Jackson? Have they been laudable? Has he been actuated by a desire to serve his country, to defend her honor, to extend her glory, to preserve her peace, happiness, and safety? Yes. Even the Speaker admits that he intended to subserve the best interests of his country. I am deeply impressed with the justice of the rule that, " the act maketh not a man guilty, unless his mind is also guilty;" and I will not condemn him. He deserves well of his country.

Even these acts, the propriety of which is doubted by some, have been, and will be, most beneficial to our country. We shall have no more Butlers, or Brandts, or Girties, or Ambristers, to stir up the savages to cruel and vengeful hostilities against us. The decision of Jackson has put an end to such practices forever. His name will contribute more to preserve the peace of the country, and to defend it, than ten thousand men.

Let me now ask, may not a man even commit some errors which it would be very inexpedient for those for whose welfare and safety he acts, to censure? This course of censuring officers, by the Legislative body, is rather a novel proceeding. It was quite otherwise in ancient times. The Roman general who, by his errors, lost the battle of Cannae, and brought his country to the brink of ruin, was not censured by the Senate: they knew, his holy zeal for the interest and the honor of his country, and he received their thanks.

Let us come to a more recent case, and one more nearly in point. Was Berkley censured for his attack on the Chesapeake, dishonoring the American flag? No; the proud government whom he served, never censured him, and considered it an insult to demand that he should be censured. They knew that he acted for the honor of the British fleet and nation; and that was his sure protection.

The Speaker refereed, by way of precedent, to the case of the hero of Lake Erie, which was before the house at the last session. I regard the wreath obtained

by him, as one of the brightest worn by any of our commanders. The victories obtained on the ocean, acquired renown for the American navy; in that respect only were they valuable. In defending the nation, or obtaining peace, they were without effect. The victory of Perry was highly useful: it opened

to our invasion the enemy's country. The victory of McDonough was much more so; it preserved our country from the invasion of the enemy. I rejoice that the hero has, in a manner so honorable to himself, removed the stain which tyrannical conduct towards an American officer and citizen had

impressed on his reputation. Let us examine the cited precedent, and see what was done in the case. There was no censure, nor was there any act of legislation, as you, Mr. Chairman, (Mr.

Pleasants) well know, because you shewed how improper legislating in the case would be.

A nation should preserve its glory; and, as the glory of a nation is composed of the aggregate of the fame of individuals, to tarnish the character of the most distinguished hero of the United States of the present age is to tarnish the glory of the nation.

The supporters of the report also profess that, to preserve the glory of the nation, is with them a favorite object. Can the report and resolutions proposed have any such effect? It might as well be said, that the enemy who burned the President's house embellished this city. If we have built up the house with additional ornaments, the city is indeed thereby embellished. So, if we shall sustain General Jackson, and present him to the world in a brighter light than he has heretofore appeared, we shall have increased our country's glory.

Are you ready to sacrifice the foremost, far the formost of your heroes, to propitiate Spain or Great Britain? Carthage, conquered and degenerate Carthage, was willing to sacrifice Hannibal to the hatred of Rome. I hope we are not disposed to follow that example. Should we do so, our conduct will resemble that of the sheep in the fable, who, at the request of the ambassador of the wolves, gave up their dogs. O! what an acceptable thing it would be to England, to hear that the hero of

New-Orleans, the conqueror of Pakenham, had been sacrificed by the jealousy of his country ! When a measure is proposed, we should carefully look to the consequences of its adoption. It is , therefore, worthy of particular observation, that the militia are the chief defence of this nation ; and that the utility of that kind of troops, in a great measure, depends on their confidence in their commander. That confidence can only be obtained by experience. They deserted in battalions from Washington himself, before he had established his great character. No man ever possessed the confidence of the militia in so high a degree as General Jackson ; and under his command they will prove invincible.

Let me now say a word of the services of the man whom it is proposed to disgrace. Those services ought to be set forth in a stile to which I have no pretensions. It is not for me to speak in adequate terms of the first of heroes ; of an officer whose achievements are unparalleled in ancient or modern times. I do not magnify his actions. I call on the man deep read in history, to whew me the page where victories such as those of Jackson have been recorded. I speak of his victory over the Creeks, and his victory at New Orleans.

Let us compare his victory over the Creeks, with other victories obtained over a similar enemy, and recorded in our history. When Sullivan advanced to avenge the massacres of Wyoming, excited by the British agents, and perpetuated by Indians and traitors, he commanded five thousand men, and found eight hundred Indians posted behind a breast work, with a river in their rear ; a battle ensued ; the Indians were beaten, and left eleven of their warriors dead on the field of battle. At Point Pleasant, where the Indians were defeated in 1774, where a Lewis commanded, and a Lewis fell, they left eighteen of their warriors dead on the field of battle. When Wayne, after years of preparation, gained his victory over the Indians of the North West, they left twenty of their number dead on the field of battle. At Tippecanoe, the Indians were defeated, and their loss so considerable, that they left more than thirty warriors on the field of battle.

Jackson marched against the Creeks ; he found them in considerable force, and defended by works : those works he stormed, defeated them, and killed eight hundred of their bravest warriors in a single battle. Thus, he gained a victory unparalleled in Indian warfare, and acquired for the United States the extensive, beautiful, and valuable country, of which you see a map suspended near you ; a small part of which country you have sold, in the last year, for ten millions of dollars.

Let us follow the General to New-Orleans. There we find him with a motley force of three thousand six hundred men, meeting twelve thousand of the best troops that ever appeared on our shores. May I not say of the best troops that ever appeared in any age or nation ? Yes and they were as unprincipled as fearless. They had driven the warriors of France, those conquerors of continental Europe, from the pillars of Hercules to the Pyrenees. A part of them had sacked this city, and burned the capitol ; a part of them had visited Hampton they had left the fathers in anguish unutterable they had left the matrons and the virgins in tears ; yes, they had committed against us wrongs which are never to be forgotten ; and by those wrongs they had obtained for the descendants of their commander a right to wear in their coat of arms, in all time to come, as a badge of our country's disgrace, the American flag, with the standard broken.

Surely, sir, there must be an overruling Providence, who directs the destinies of men and nations. Those troops who had violated the rights of war, who had committed against us every atrocity, and heaped upon our country every disgrace, sailed to New-Orleans ; and there they met the dire avenger. The man appointed by Heaven to tread the wine press of Almighty wrath. With a handful of men he defeated them. With the loss of thirteen men, he defeated twelve thousand ! The incendiaries and ravishers were punished ; and the wounds inflicted on our country's honor were healed.

So disgraceful was the defeat of the enemy, that the British government at first denied a monument to their brave General who had been slain. They were desirous to hide in the shades of oblivion the disgrace of their arms : but fame has proclaimed the renown of the victor. History has recorded it ; and his name will descend to future times in a stream of light. Such is the man whom it is proposed to dishonor !

It should not be forgotten that his decision, his energy, saved New-Orleans ; his acknowledgement of

the truth of the great and fundamental principle, that, " THE SAFETY OF THE PEOPLE IS THE SUPREME LAW." A man less decisive, less devoted to the cause of his country, would have hesitated, and talked of civil rights ; the legislature might have capitulated ; and New-Orleans would have been lost. The British negociators at Ghent had denied our title to Lousiana ; and had the possession been lost, it is doubtful whether, according to the treaty of peace, it would have been restored.

Let me assure you, sir, that the American people will not be pleased to see their great defender, their great avenger, sacrificed ; even although it should not be to Spanish hatred, or British revenge. I call on the members from Pennsylvania to remember Brandt and Butler ; to remember Wyoming. I call on the members from Georgia to remember the outrages committed on their frontier ; that it was to preserve the lives of their people that the Seminole war was prosecuted ; and that the energy and decision of General Jackson has obtained for them a lasting peace. I call on the members from the West, to remember that the unhesitating decision, and vigorous measures, of this officer, saved New-Orleans, the emporium of their commerce. I need not tell the members from Tennessee, that it is this officer who has exalted so high the character of their warlike state. I call on all to remember, that the proposed measure, if adopted, must give joy to our late enemy ; and consolation to that power which perhaps is soon to be our enemy ; and that it will diminish the glory of their country, by tarnishing the splendor of the fame of her most distinguished hero.

The heirs of Ross, by order of the Prince Regent, wear in their coat of arms the American banner broken and dishonored. That insult can have no consequences injurious to us. But take care how you break and dishonor your standard yourselves.

Had this man lived before Hesiod wrote and Homer sung, temples would have risen to his honor ; altars would have blazed and he would have taken his stand with Hercules and Theseus, among the immortals, as the preserver of a nation ; the vindicator of the rights of suffering humanity ; the avenger of our matrons, our virgins, and our little ones.

And shall we see him depart from this city in disgrace ; censured and dismissed from office by Congress ; and, like Camillus, imploring Heaven so to direct human affairs, that his country may never have occasion to regret her treatment of him ? No ; it cannot be. Forbid it every power that guarded the protectors of innocence ! Forbid it policy ! Forbid it gratitude ! Forbid it justice !

[DEBATE TO BE CONTINUED.]